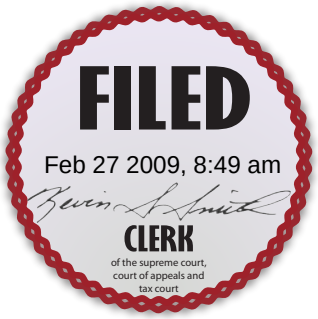

ATTORNEY FOR APPELLANT:

ERIN L. BERGER
Vanderburgh County Public Defender's Office
Evansville, Indiana

ATTORNEY FOR APPELLEE:

JONATHAN M. YOUNG
Evansville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF A.J., A.M. and A.R.F.,	)	
	)	
ALAINA J.,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 82A01-0810-JV-516
	)	
VANDERBURGH COUNTY DEPARTMENT of CHILD SERVICES,	)	
	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-0711-JT-106
82D01-0711-JT-107
82D01-0711-JT-108

February 27, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Alaina J. ("Mother") appeals the involuntary termination of her parental rights, in Vanderburgh Superior Court, to her children, A.J., A.M., and A.R.F. On appeal, Mother claims the trial court abused its discretion when it denied her motion for a continuance. Concluding that the trial court's denial of the motion to continue did not constitute an abuse of discretion, we affirm.

Facts and Procedural History

Mother is the biological mother of A.R.F., born on August 18, 1998; A.J., born on December 29, 2001; and A.M., born on August 29, 2006 (collectively, "the children").[1] The facts most favorable to the judgment reveal that the Vanderburgh County Department of Child Services ("VCDCS") entered into a program of informal adjustment with Mother and began providing services to the family when it was discovered that A.M. tested positive at birth for THC.[2] On March 6, 2007, the children were removed from Mother's care and taken into emergency protective custody after Mother tested positive for cocaine in violation of the terms of the informal adjustment. During a subsequent hearing, Mother admitted that the children were in need of services ("CHINS").

On April 3, 2007, the trial court issued its dispositional order in the CHINS proceeding. The order contained a parent participation plan, signed by Mother, wherein Mother agreed to participate in a variety of services in order to achieve reunification with the

[1] The children have three different biological fathers who do not participate in this appeal. Consequently, we limit our recitation of the facts solely to those facts pertinent to Mother's appeal.

[2] THC is an abbreviation for the main active chemical in marijuana, namely, delta-9-

children. The parent participation plan directed Mother to, among other things: (1) attend, comply with, and complete drug court if so ordered; (2) exercise regular visitation with the children; (3) attend and successfully complete a substance abuse treatment program; (4) submit to random drug screens; (5) maintain safe and appropriate housing that is drug-free; (6) obtain and maintain a sufficient means of financial support; (7) abstain from using or possessing any mind-altering substances; and (8) obey the law.

Throughout the duration of the CHINS case, Mother was non-compliant with the parent participation plan and failed to cooperate with VCDCS caseworkers and other service providers. For example, Mother failed to obtain and maintain stable housing and employment. Mother also failed to exercise regular visitation with the children, to successfully complete a substance abuse treatment program, and to submit to regular drug screens. Mother tested positive for cocaine on May 1, 2, and 11, 2007. Mother also tested positive for THC on fourteen occasions between January 15, 2007, and July 29, 2007.

On May 30, 2007, Mother admitted to testing positive for marijuana and cocaine and was found in contempt of court. The trial court sentenced Mother to ninety days in jail; however, Mother's sentence was taken under advisement, and Mother was ordered into drug court. On October 17, 2007, Mother was discharged from the drug court program as unsuccessful for failing to comply with program rules. On July 11, 2007, Mother was again found in contempt for failing to comply with the trial court's orders regarding visitation with the children, random drug screens, substance abuse treatment, and home-based services. Mother was sentenced to ninety days in jail with eighty-two days suspended and eight days to

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tetrahydrocannabinol.

be served in the Vanderburgh County Jail.

Due to Mother's continuing non-compliance with court-ordered services, the VCDCS filed a petition seeking the involuntary termination of Mother's parental rights to the children on November 20, 2007. A fact-finding hearing on the termination petition was set for May 8, 2008. On May 5, 2008, Mother filed a motion to continue the termination proceedings. Mother's motion was denied on May 7, 2008.

At the commencement of the termination hearing on May 8, 2008, Mother verbally renewed her motion to continue, which the trial court denied. At the conclusion of the evidentiary hearing, the trial court took the matter under advisement. On June 12, 2008, the trial court issued its order terminating Mother's parental rights. Mother now appeals.

Discussion and Decision

At the outset, we observe that Mother does not challenge the validity of the trial court's findings and conclusions, nor does she assert that the State failed to meet its burden pursuant to Indiana Code section 31-35-2-4(b). Rather, Mother's sole allegation of error is that the trial court abused its discretion when it denied her motion to continue the termination hearing.

The decision whether to grant or deny a non-statutory motion for a continuance lies within the sound discretion of the trial court. Litherland v. McDonnell, 796 N.E.2d 1237, 1240 (Ind. Ct. App. 2003), trans. denied. Discretion is defined as "a privilege afforded a trial court to act in accord with what is fair and equitable in each case." McCullough v. Archbold Ladder Co., 605 N.E.2d 175, 180 (Ind. 1993). Moreover, the Indiana Supreme Court has explained that an abuse of discretion review consists of an "evaluation of facts in

relation to legal formulae. In the final analysis, the reviewing court is concerned with the reasonableness of the action in light of the record." Tapia v. State, 753 N.E.2d 581, 585 (Ind. 2001) (quoting 4A Kenneth M. Stroud, Indiana Practice § 12.8 at 246 (2d ed. 1990)) (emphasis in original). Thus, a trial court's exercise of discretion should be upset only when the court's ruling is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable and actual deductions to be drawn therefrom. Id. Although the facts and reasonable inferences in certain instances might allow for a different conclusion, we will not substitute our judgment for that of the trial court. McBride v. McBride, 427 N.E.2d 1148, 1151-52 (Ind. Ct. App. 1981).

Continuances for additional time to prepare for trial are generally disfavored; therefore, courts should grant such motions only where good cause is shown and where such a continuance is in the interest of justice. Palmer v. State, 704 N.E.2d 124, 127 (Ind. 1999). "An abuse of discretion may be found in the denial of a motion for a continuance when the moving party has shown good cause for granting the motion." Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 619 (Ind. Ct. App. 2006), trans. denied. However, no abuse of discretion will be found when the moving party has not demonstrated that he or she was prejudiced by the denial. Id.

Mother claims on appeal that she was "prejudiced by the denial of the continuance of the [termination] trial in that it affected her ability to demonstrate to the [trial] court that the conditions which caused the removal of the children would be remedied." Appellant's Brief at 5. Mother further argues that, had the trial court granted her request for a continuance and

given her "the opportunity to participate in services, [Mother] would have been able to satisfy the caseworker's stated requirements and could have been reunited with the children that she has now lost forever." Id.

Turning to the merits of Mother's arguments, the evidence shows that the VCDCS filed its petition seeking the involuntary termination of Mother's parental rights to the children on November 20, 2007, approximately eight months after the children were initially adjudicated CHINS by the trial court. This occurred after Mother had failed to successfully complete even one of the dispositional goals and services ordered by the court and designed to facilitate reunification of the family. By the time of the termination hearing on May 8, 2008, the children had been removed from Mother's care for approximately fourteen months; yet, Mother still had not completed or benefitted from a single service available to her nor addressed her significant substance abuse problem. In fact, Mother admitted during the termination hearing that she had smoked marijuana as recently as fourteen days prior to the hearing and had consumed a beer during the lunch break earlier that day.

We agree with the VCDCS that Mother's basis for her motion to continue was "essentially [an argument] that she needed more time" to complete services rather than a substantive argument demonstrating there was good cause for a last-minute delay of the termination hearing. Appellee's Brief at 5. We have previously explained that the time for parents to rehabilitate themselves is during the CHINS case, prior to the filing of the petition for termination. Prince v. Dep't of Child Servs., 861 N.E.2d 1223, 1230 (Ind. Ct. App. 2007). Moreover, the termination statutes:

> do not require the court to give a parent additional time to meet his or her obligations under the Parent Participation Plan. See, e.g., Ind. Code § 31-35-2-6 (a hearing requested on a petition to terminate rights following a CHINS determination must be commenced within 90 days and completed within 180 days). If its schedule permitted, a court could hold a hearing and terminate a parent's rights within two weeks of the petition being filed. See Ind. Code § 31-35-2-6.5 (requiring interested parties be given ten days notice of a termination hearing).

Id.

Here, it is apparent that the trial court was in a position where it could only speculate about the benefits, if any, that Mother might have gained had her motion for a continuance been granted. To be sure, there was no showing that a grant of additional time, in and of itself, would have likely aided Mother in her efforts to reunify with her children when she had already been afforded a significant period of time to complete the requirements, but had failed to do so. We will not second-guess the trial court's decision under these circumstances.

Pursuant to Indiana's termination statutes, in order to effect an involuntary termination of parental rights, the State is required to prove, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in a child's removal from the home of the parents will not be remedied, or that continuation of the parent-child relationship poses a threat to the well-being of the child. Ind. Code § 31-35-2-4(b)(2)(B). The trial court must examine a parent's fitness to care for his or her children at the time of the termination hearing, as well as the parent's habitual patterns of conduct, when determining whether there is a substantial probability of future neglect or deprivation of the child. In re D.G., 702 N.E.2d 777, 779 (Ind. Ct. App. 1998). In so doing, a trial court may properly consider

evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. Id. A trial court may also reasonably consider the services offered to the parent by the county Department of Child Services (here, the VCDCS) and the parent's response to those services, in determining whether the conditions leading to removal will be remedied. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997).

Although we acknowledge that the right to raise one's own children is an essential, basic right, more precious than property rights, and within the protection of the Fourteenth Amendment, see In re M.G.S., 756 N.E.2d 990, 1004 (Ind. Ct. App. 2001), trans. denied, this right is not absolute and must be subordinated to a child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when a parent is unable or unwilling to meet his or her parental responsibilities. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Moreover, a trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. Id.

In terminating Mother's parental rights, the trial court made the following pertinent findings and conclusions:

> 13. [Mother] has a history of substance abuse, including abuse of marijuana and cocaine. [Mother] was unwilling to complete substance abuse treatment as ordered by the Court. [Mother] exhibited a pattern of leaving treatment and/or absences from treatment and admitted relapse, which was recommended by her counselor at Stepping Stone treatment facility, prior to completion of treatment. This pattern resulted in her case with Stepping Stone being closed

on October 11, 2007. [Mother] did not attempt to re-open her case until the day before the termination trial.

* * *

17. [Mother] admitted to using marijuana as recently as fourteen (14) days prior to the termination trial. On the stand, under oath, [Mother] stated that she had last consumed alcohol sometime the week prior to the termination trial. Subsequently, [Mother] tested .012 BAC when tested by Hi-Tech Investigative at Court. She then admitted to having a beer at the lunch break of the termination trial.

* * *

21. [Mother] admits that she cannot argue with the visitation that she has missed and cited a "lack of concern[]" on her part during that time as the cause for missing. . . .

* * *

23. The in-home therapist was not able to complete her goals for the case due to the non-compliance of [Mother]. . . .

* * *

25. [Mother] did not have employment during the course of her involvement with the [VCDCS]. . . .

26. [Mother] failed to pay child support for her children as ordered by the Court. . . .

* * *

32. [Mother] has demonstrated a lack of progress over the course of the case and there is little hope that trend will reverse based upon her history and recent lack of sobriety.

* * *

34. On May 5th, 2008[,] [Mother] filed for a continuance of these actions alleging that the father's rights could not be terminated as of this date so she should continue to receive services in another attempt to get her children back.

35. [Mother's] continuance was denied based upon the history of Mother's noncompliance and the Court's belief that the children need permanency in regards to their mother.

36. [Mother] requested a continuance and appeared late for her termination trial as she had admitted herself into in-patient drug treatment. This treatment could have been available to her for months, but she chose to try to manipulate the system at the last second.

37. [Mother] claimed she hadn't used drugs since February, but the Court doesn't believe such a statement, especially in light of the fact that she just had admitted herself to in-patient treatment and used alcohol during a lunch break of the trial.

Appellant's Appendix at 30-33. These findings, which Mother does not challenge,

demonstrate that it was entirely reasonable for the trial court to conclude that Mother would not suffer adverse consequences merely by denying her motion to continue the termination hearing.

The trial court's judgment makes clear that it denied Mother's motion to continue based on Mother's history of non-compliance with court-ordered services and the court's belief that there is a reasonable probability Mother's behavior will not change, coupled with the children's need for permanency. Based on the underlying facts of this case, we cannot say that the trial court's decision to deny Mother's motion for a continuance was clearly against the logic and effect of the facts and circumstances before the trial court. See J.M. v. Marion County Office of Family & Children, 802 N.E.2d 40, 44-45 (Ind. Ct. App. 2004) (concluding that trial court did not abuse discretion in denying mother's motion for continuance when mother failed to show she was prejudiced by court's refusal to grant her motion to continue), trans denied. Accordingly, we find no error.[3]

Conclusion

Mother failed to show that she was prejudiced when the trial court denied her motion to continue the termination hearing. Moreover, a review of the record leaves us convinced that the trial court's refusal to grant Mother's motion to continue was reasonable under the circumstances and thus did not constitute an abuse of discretion.

[3] Having determined that Mother failed to show she was prejudiced by the trial court's denial of her motion to continue the termination hearing, we need not address Mother's additional assertion, which she admits in her Appellant's Brief is not supported by Indiana statutory or case law, that it was "inappropriate" for the court to terminate her parental rights in light of the fact that one of the children's fathers had recently begun participating in services. Appellant's Br. at 7. See Rowlett, 841 N.E.2d at 619 (stating that no abuse of discretion will be found where the moving party fails to demonstrate that he or she was prejudiced by the trial court's denial of the motion).

Affirmed.

CRONE, J., and BROWN, J., concur.